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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,347	09/19/2003	Michael D. Green	023340-0201	4647
30542	7590	04/28/2005	EXAMINER	
FOLEY & LARDNER P.O. BOX 80278 SAN DIEGO, CA 92138-0278			PATEL, TAJASH D	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/666,347	Applicant(s) GREEN, MICHAEL D.	
	Examiner Tejash D Patel	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 11, 12, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dicker et al. (US 6,176,816). Dicker et al. (hereinafter Dicker) discloses an exercise/training, crew neck garment including sleeves and a torso portion having a pair of flaps (102) being secured to respective sides of the torso/waist portion as shown in figure 10. Further, each of the flaps has hook and loop material on a free end that is adjustably secured over the abdominal region when both flaps are fastened, col. 6, lines 32-65 and as shown in figure 9. Furthermore, the torso portion of the garment includes a corset arrangement as shown in figures 7 and 8. Also, the garment includes a leg portion that is integrally formed with the torso portion as shown in figures 1, 5 and 6.

3. Claims 1-5, 9, 10 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nadeau (US 5,810,699). Nadeau discloses an exercise sleeveless garment including a torso portion having a pair of flaps (102, 104) being secured to respective sides of the torso/waist portion as shown in figure 3. Further, each of the flaps has hook and loop material on a free end

that is adjustably secured over the abdominal region when both flaps are fastened, col. 4, lines 15-21. Furthermore, the torso portion includes a plurality of pockets having weights therein, col. 3, lines 34-65.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dicker in view of Fairweather (US 5,033,117). Dicker discloses the invention as set forth above except for showing the leg portion having a plurality of pockets adapted to retain weights therein.

Fairweather discloses an exercise garment having a leg portion with a plurality of pockets adapted to retain weights therein as shown in figure 1.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the bands (20,80) of Dicker with a plurality of weight pockets as taught by Fairweather an alternative but equivalent means of providing resistance to the legs when the garment is worn as known in the art.

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6. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dicker.

With regard to claim 14, it would have been obvious to one skilled in the art that the garment of Dicker can be made of any desired material that was available at the time the device was made or depending on the end use thereof.

With regard to claims 15-17, col. 3, lines 26-30 of Dicker states that mechanical or electrical accessories can be attached to the garment. Therefore, it would have been obvious to one skilled in the art that any electrical or any other desired item can be attached to the garment as required for a particular application or end use thereof.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (703) 872-9306.



**TEJASH PATEL
PRIMARY EXAMINER**

April 25, 2005